IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

WA.No. 1608 of 2002(A)

AGAINST THE JUDGEMENT IN OP.8718/2001
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APPELLANT: PETITIONER:

JOSEPH MUTTATHIL, S/O. THOMAS,
ANGADIKKADAVU P.O., KANNUR DISTRICT.

BY ADV. SRI.M.A.FIROZ
SRI.SERGI JOSEPH THOMAS
SRI GEORGE MECHERIL
SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)

RESPONDENTS: RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED
BY ITS SECRETARY TO GOVERNMENT,
CO-OPERATION DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES, KANNUR DISTRICT.

3. THALASSERRY TALUK RUBBER &
AGRICULTURAL MARKETING CO-OPERATIVE
SOCIETY LTD.NO.927, P.O. IRITTY, REPRESENTED
BY ITS MANAGING DIRECTOR.

4. THE PRESIDENT, THALASSERY TALUK
RUBBER & AGRICULTURAL MARKETING CO-OPERATIVE
SOCIETY LTD.NO.927, IRITTY P.O.,
KANNUR DISTRICT.

R1 & R2 BY SPECIAL GOVERNMENT PLEADER
FOR CO-OPERATUVE SOCIETIES SMT. A.G.ANEETHA
R3 & 4 BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 17/07/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A.No.1608 of 2002 - A

Dated, this the 17th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

This appeal is directed against the orders passed by the learned Single Judge in O.P.No.8718 of 2001 dated 18th June, 2002. By the impugned order, the leaned Single Judge has disposed of the writ petition with certain observations. They are as under:

> "Therefore, I dispose of the Original Petition making it clear that in case the petitioner applies for membership, the third respondent society shall consider the application of the petitioner and admit him to the membership if he is otherwise eligible, as and when the election is over."

2. In the writ petition filed before this court, the petitioner had called in question Ext.P1 notification issued by the 4th respondent/president of the society. The said notification is in Malayalam language. The purport of the notification is in the form of a direction to the members of the society that they shall pay the enhanced share value of Rs.100/- on or before a particular date and if the said amount is not paid, they would be disqualified as members of the society.

3. In the writ petition it was alleged that even for passing a resolution for enhancement of the share value of a member of a society, an individual notice as required under section 11(2) of the Co-operative Societies Act (for short the Act) to all the members of the society is a must and since that has not been done, the society could not have enhanced the share value from Rs.50/- to Rs.100/- from each member. In support of that contention the learned counsel appearing for the petitioner/appellant would take us through the provisions of section 11 of the Act read with the rules framed thereunder.

The learned counsel would further submit that the decision rendered by this court in the case of ***Balakrishnan and another v. Returning Officer and others - 1993(1) KLJ 280*** requires reconsideration. Apart from this, the learned counsel would contend that the president has no jurisdiction or authority of law to expel a member of the society without following the due procedure prescribed under the Act and the Rules framed thereunder. In support of the contention the learned counsel has taken us through the various provisions of the Act and the Rules.

4. The first question that requires to be considered by us is whether individual notice as required in section 11(2) of the Act is required to be issued to each member of the society while enhancing the share value of the members of the society. A learned Single Judge of this court in the case of ***Balakrishnan and another v. Returning Officer and others - 1993(1) KLJ 280*** has observed as under:

> "Chapter II of the Act deals with registration of Co-operatives Societies. Section 11(1) enables a society by amendment of its bye-laws to change the form or extent of its liability. Section 11(2) provides that when a society has passed a resolution to change the form or extent of its liability, it shall give notice thereof in writing to all its members and creditors and notwithstanding the provisions of Section 24 or any bye-laws or contract to the contrary, any member or creditor shall, during a period of two months from the date of service of the notice upon him, has the option of withdrawing his shares, deposits of loans, as the case may be. Sub-section (3) states that any member or creditor who does not exercise his option envisaged under sub-section (2) shall be deemed to have given his assent to the change. Contention of the petitioners that increase of share value by amendment to the bye-laws of a society would come under Section 11(2) and so all the members should be given separate notice calling upon them to pay the

> increased share value cannot be accepted as the above provision is not really intended to meet such a situation. That can be easily discerned from the provisions in Chapter III of the Act which concerns the members of the Co-operative Societies and their rights and liabilities."

5. The ratio of the judgment rendered by this court is that, once a resolution is passed in the General Body meeting of the society, issuance of individual notices for the purpose of enhancement of the membership fee of the society as envisaged under section 11(2) of the Act is not required.

6. Section 11 of the Act speaks of change of liability. Sub-section (1) of Section 11 of the Act authorises the society registered under the Act to change or amend its bye-laws, to bring a change in the form of the Society or extent of liability of the Society and the amendment of the bye laws that may be made is subject to the provisions of the Act and the Rules framed thereunder. Sub-section (2) of section 11 of the Act is a provision which requires our consideration. Therefore it is extracted and it reads as under:

> "(2) When a society has passed a resolution to change the form or extent of its liability, it shall give thereof in writing to all its members and creditors and notwithstanding the provisions of S.24 or any bye-laws or contract to the contrary, any member or creditor shall, during a period of two months from the ate of service of notice upon him, have the option of withdrawing his shares, deposits of loans, as the case may be."

7. A reading of the aforesaid provision would indicate that when a society has passed a resolution to change the form or extent of its liability, it shall give a notice in writing to all its members and creditors and indicate in the notice that if a member has any objection, he shall file the same within two months from the date of service of the

notice. That only means after the resolution is passed to change the form of Society, the Society will give notice to all the members of the Society and if any member has any reservation to the resolution passed, he may file his objection, if any, to the resolution passed. The requirement of issuance of individual notice after passing the resolution by the members of the Society in the General Body Meeting held is only a form of information to the members of the Society to voice their objections, if any, to the resolution passed in the General Body Meeting of the Society. This requirement is only an additional information to the members of the Society and if that is not complied, it cannot be said that the resolution passed by the Society in its General Body Meeting after issuing necessary notice to all the members of the Society with the necessary information about the subject matter that would be discussed in the meeting that is convened is contrary to the provisions of the Act. In our view, it would be futile exercise to issue one more notice to the individual members of the Society about the resolution passed in the General Body Meeting of the Society enhancing the share value of the society. Therefore, in our opinion, a resolution passed in the General Body Meeting held needs to be informed to the members of the Society and failure of the same will not vitiate the entire proceedings. Sub-section (3) of section 11 of the Act provides for a deeming provision. It says, if for any reason any member does not file his objections within the time stipulated under sub-section (2) of section 11 of the Act, it is deemed that he has given his consent to the change.

8. Rule 9 of the Co-operative Societies Rules (the Rules for short) provides for the procedure regarding amendment of the bye-laws of the society. The said provision is as under:

"Procedure Regarding Amendment of Bye-laws:- (1) Every

proposal for amendment to the bye-laws of a society shall be made only by a resolution passed by a 2/3 majority of the members present and voting. Such resolution shall be forwarded to the Registrar within one month from the date of the General Body meeting at which such amendment was passed provided that the Registrar may condone the delays, if any, for sufficient cause.

(ii) No such resolution shall be valid, in the case of a society having not more than two thousand members, unless intimation of the amendment proposed has been given to the members of the society either in person and their full signature in token of having received the same has been obtained, or by post under certificate of posting and in other cases, it shall be sufficient if the date, time, place and agenda of such General Body meeting with details of the amendment proposed are published in two vernacular dailies having wide circulation in the area of the operation of the society, in the notice board of the society, at the head office and branches and also in the notice board of the office of the Assistant Registrar of Co-operative Societies of the circles within which the area of the operation of the society falls.

(iii) Every application made to the Registrar for the registration of amendment shall be signed by the Secretary and two members of the Committee and shall contain the following particulars,-

(a) the date of the General Body meeting at which the amendment was made;

(b) the number of days' notice given to convene the General Body meeting;

(c) the number of days notice required as per the bye-laws for

the General Body Meeting;

(d) the total number of members of the society on the date of such meeting;

(e) the number of members who formed the quorum for such meeting;

(f) the number of members present at such meeting;

(g) the number of members who exercised their votes at the meeting; and

(h) the number of members who voted for the amendment,

(iv) The proposal shall be accompanied by.-

(a) a copy of the relevant bye-laws in force with amendments proposed to be made in pursuance of the resolution, together with reasons justifying such amendments.

(b) four copies of the text of the bye-laws as it would stand after amendment, signed by the officers authorised in this behalf by the committee of the society."

9. In the instant case, the bye-laws of the society provides that the share value of each member of the society is Rs.50/-. The society has amended its bye-laws by enhancing the share value from Rs.50/- to Rs.100/-. For this purpose a General Body meeting of the members had been called. Two-third of the members of the society had participated in the said General Body meeting and had endorsed the resolution of the

society for enhancement of the share value of the members of the society from Rs.50/- to Rs.100/-. Since a resolution has been passed in a General Body meeting held for the purpose of amendment of the bye-laws of the society to enhance the share value of the society and the said resolution has been passed with the approval of the 2/3 members of the society, the question of issuing individual notice as envisaged under sub-section (2) of section 11 of the Act is wholly unnecessary. In that view of the matter, the first contention of the learned counsel has no merit whatsoever. In fact, this is the view that is taken by the learned Single Judge of this Court in ***Balakrishnan and another v. Returning Officer and others - 1993(1) KLJ 280***. We are in full agreement with the aforesaid view expressed by the learned Single Judge.

10. In so far as the threat that is issued in the notice by the 4th respondent/president of the society to cancel the membership of a member of the society in the event a member of the Society does not remit the enhanced share amount on or before a prescribed date, the same cannot be sustained by us, in view of what has been stated by a Division Bench of this court in the case of ***Kadakam Service Co-operative Bank Ltd. v. Narayana Bhat - 2004 (2) KLT 179***. Even otherwise also, the several rules which were brought to our notice by the learned counsel for the appellant would clearly demonstrate that for expelling a member of the society, certain procedures are required to be followed by the society. In the instant case without following such procedures, the president of the society could not have posed a threat to the members of the society that in the event they failed to remit the enhanced share amount of the society, the membership would be cancelled and, therefore, that portion in the notice issued by the President of the Society requires to be set aside.

11. In view of the above, the following:

Order

(i) The writ appeal is allowed in part.

(ii) The first contention canvassed by the learned counsel for the appellant that individual notices should have been issued to each member of the society while passing a resolution for enhancement of the share value of the society is rejected.

(iii) The direction issued by the president of the society that in the event of a member fails to remit the enhanced share amount of the society, his membership would be cancelled, requires to be set aside and it is set aside.

(iv) If, for any reason, the society intends to take any action against the member of the society for the alleged acts of contravention of the provisions of the Act or the Rules framed thereunder or the bye-laws of the society, the society shall do so only in accordance with the provisions of the Act and the Rules framed thereunder.

(v) Liberty is also reserved to the appellant to pay the enhanced share amount, if he so desires, within a month's time from today.

(vi) In view of the order passed in the Writ Appeal, the relief sought for in C.M.P. No.4220 of 2002 need not be considered by this court. Accordingly, the said C.M.P. is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK